

1 Evan J. Smith, Esquire (SBN 242352)
esmith@brodsky-smith.com
2 Ryan Cardona, Esquire (SBN 302113)
rcardona@brodsky-smith.com
3 BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212
4 Telephone: (877) 534-2590
5 Facsimile: (310) 247-0160

6 *Counsel for Plaintiff Gary Lunsford*

17 JUL 25 P4:31
DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 GARY LUNSFORD,) Civil No.
11)
12 Plaintiff,)
13 vs.) **COMPLAINT FOR DECLARATORY**
14) **AND INJUNCTIVE RELIEF AND**
15 ARROWHEAD BRASS PLUMBING) **CIVIL PENALTIES**
16 and ARROWHEAD BRASS &)
17 PLUMBING, LLC,) (Federal Water Pollution Control Act, 33
18 Defendants.) U.S.C. § 1251 et seq.)
19)
20)

21 Plaintiff Gary Lunsford ("Plaintiff"), by and through his counsel, alleges as
22 follows:

23 1. This is a citizen suit, brought pursuant to the section 505(a)(1) of the
24 Federal Water Pollution Control Act (the "Clean Water Act" or "CWA"), 33 U.S.C. §
25 1365(a)(1), to address violations of the CWA by defendants Arrowhead Brass
26 Plumbing and its parent and/or affiliated Companies Arrowhead Brass & Plumbing,
27 LLC (collectively, "Arrowhead" or "Defendants") arising out of operations at
28 Arrowhead's facility located at 5142 Alhambra Ave., Los Angeles, CA 90032,
California (the "Facility").

1 2. Since at least May 12, 2011, Defendants have been discharging and
2 continue to discharge polluted stormwater from the Facility in violation of the express
3 terms and conditions of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§
4 1311, 1342, and in violation of the General Industrial Stormwater Permits issued by
5 the State of California (NPDES General Permit No. CAS000001 [State Water
6 Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order
7 No. 97-03-DWQ) ("1997 Permit") and Order No. 2014-0057-DWQ ("2015 Permit")
8 (collectively, the "Industrial Stormwater Permit").

9 3. Plaintiff seeks a declaratory judgment, injunctive relief, the imposition of
10 civil penalties, and the award of costs, including attorneys' and expert witness fees, for
11 Defendants' repeated and ongoing violations of the Clean Water Act.

12 **JURISDICTION AND VENUE**

13 4. This Court has subject matter jurisdiction over the parties and subject
14 matter of this action pursuant to section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1),
15 28 U.S.C. § 1331 (an action arising under the laws of the United States), and 28 U.S.C.
16 § 2201 (declaratory relief).

17 5. On August 22, 2016, as required by the CWA, 33 U.S.C. § 1365(b)(1)(A),
18 Plaintiff provided notice of intent to file suit against Defendants for CWA violations
19 ("Notice Letter") to the Administrator of the United States Environmental Protection
20 Agency ("EPA"); the Regional Administrator of EPA Region IX; the Executive
21 Director of the State Water Resources Control Board ("State Board"); the Executive
22 Officer of the Regional Water Quality Control Board, Los Angeles Region ("Regional
23 Board") collectively, "state and federal agencies") and Defendants.

24 6. The Notice Letter provided Defendants with sufficient information to
25 determine (i) the CWA requirements Plaintiff alleges Defendants violated, (ii) the
26 activity alleged to constitute the violation(s), (iii) sufficient information to determine
27 the date, location, and person responsible for the violation(s), and (iv) the contact
28

1 information for the Plaintiff and Plaintiff's Counsel. A copy of the Notice Letter is
2 attached as Exhibit 1.

3 7. More than sixty (60) days have passed since notice of the alleged violation
4 was served upon Defendants and the state and federal agencies. Neither the EPA, nor
5 the State of California, has commenced or is diligently prosecuting a court action to
6 redress the violations alleged herein. No claim in this action is barred by any prior
7 administrative action pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g).

8 8. Venue is proper in the Central District of California pursuant to section
9 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is
10 located within this judicial district.

11 **PARTIES**

12 9. Plaintiff is a citizen of the State of California who, through his recreational
13 activities, uses and enjoys the waters of the Los Angeles River, its inflows, outflows,
14 and other waters of the Los Angeles River Watershed. Plaintiff's use and enjoyment
15 of these waters is negatively affected by the pollution caused by Defendants'
16 operations. Plaintiff is dedicated to protecting the water quality of the Los Angeles
17 River, and the overall Los Angeles River Watershed for the benefit of its ecosystems
18 and communities. To further these goals, Plaintiff actively seeks federal and state
19 agency implementation of the CWA, and, where necessary, directly initiates
20 enforcement actions on behalf of herself and for his community.

21 10. Plaintiff, like other citizens, taxpayers, property owners, and residents of
22 his community, lives, works, travels near, and recreates in, the Los Angeles River, its
23 tributaries, and the overall Los Angeles River Watershed, into which Defendants
24 discharge pollutants. Plaintiff, like other citizens, taxpayers, property owners, and
25 residents, uses and enjoys the Los Angeles River, its tributaries, and the overall Los
26 Angeles River Watershed for recreational, educational, scientific, conservation,
27 aesthetic, spiritual, and other purposes. Defendants' discharges of stormwater
28

1 containing pollutants impairs each of these uses. Thus, Plaintiff's interests have been,
2 are being, and will continue to be adversely affected by Defendants' failure to comply
3 with the CWA and the Industrial Stormwater Permit.

4 11. Defendant Arrowhead Brass Plumbing is an active California company
5 located at 5142 Alhambra Ave., Los Angeles, CA 90032.

6 12. Defendant Arrowhead Brass & Plumbing, LLC is a California Limited
7 Liability Company, also located at 5142 Alhambra Ave., Los Angeles, CA 90032.

8 13. Upon information and belief, all Defendants are affiliated with one
9 another and all Defendants participate in the operation of the Facility.

10 14. Defendants' Facility operates as a plumbing supply foundry that makes
11 parts and components such as faucets, hose bibs, valves and a line of brand named
12 agricultural and residential irrigation products, and that is located at 5142 Alhambra
13 Ave., Los Angeles, CA 90032. Activities include (i) mold and core production; (ii)
14 metal charging; (iii) melting; (iv) hot metal pouring; (v) mold cooling;; (vi) shakeout;
15 (vii) shakeout; (viii) finishing; (ix) grinding; (x) machining; (xi) plating and assembly
16 operations. Repair and maintenance activities carried out at the facility include, but are
17 not limited to, electrical, plumbing, roofing, asphalt, concrete, and utilities repairs as
18 well as janitorial duties.

19 15. The Facility, is listed as operating under SIC Code 3471, relating to
20 Electroplating, Plating, Polishing, Anodizing, and Coloring, SIC Code 3369, relating
21 to Nonferrous Foundries, Except Aluminum and Copper, and SIC Code 3462 relating
22 to Iron and Steel Forgings. Defendants applied for coverage under the California
23 Industrial General Permit on May 12, 2011, and were issued WDID No. 4 19I023153.
24 Defendants reapplied for coverage under the 2015 Industrial Stormwater Permit on
25 June 24, 2015, and were granted the continued use of their previously issued WDID
26 No. The May 12, 2011, and June 24, 2015 "Notice of Intent" for the Facility to comply
27 with the terms of the Industrial Stormwater Permit list "Arrowhead Brass Plumbing"

28

1 as the operator and Facility names, respectively. Plaintiff is therefore informed and
2 believes and thereon alleges that Defendants own and/or operate the Facility.

3 **REGULATORY BACKGROUND**

4 ***The Problem of Stormwater Pollution***

5 16. Stormwater runoff is one of the most significant sources of water pollution
6 in the nation and has been recognized as a leading cause of significant and cumulative
7 harmful impacts to the water quality of the Los Angeles River, its tributaries, and the
8 overall Los Angeles River Watershed. With every rainfall event, significant amounts
9 of polluted rainwater flow from local industrial facilities, such as the Facility, and pour
10 into storm drains, local tributaries, and into the Los Angeles River, its tributaries, and
11 the overall Los Angeles River Watershed.

12 17. Stormwater runoff from industrial sites such as the Facility causes harm
13 to humans and aquatic life. In particular, stormwater can contain heavy metal
14 pollutants such as aluminum, chromium, copper, iron, lead, mercury, nickel, tin, and
15 zinc, as well as high concentrations of suspended solids, and nitrate plus nitrite
16 nitrogen. Exposure and ingestion of heavy metals can cause health problems in people
17 and aquatic animals, including neurological, physiological, and reproductive effects.
18 Heavy metals have been shown to alter activity in tissues and blood of fish.

19 18. High concentrations of total suspended solids ("TSS") degrade optical
20 water quality by reducing water clarity and decreasing light available to support
21 photosynthesis. TSS have been shown to alter predator/prey relationships (for
22 example, turbid water might make it difficult for fish to see their prey). Deposited
23 solids alter habitat for fish, aquatic plants, and benthic organisms. TSS can also be
24 harmful to aquatic life because numerous pollutants, including metals and polycyclic
25 aromatic hydrocarbons ("PAHs"), are absorbed onto TSS. Thus, higher concentrations
26 of TSS mean higher concentrations of toxins associated with those sediments.
27 Inorganic sediments, including settleable matter and suspended solids, have been
28

1 shown to negatively impact species richness, diversity, and total biomass of filter
2 feeding aquatic organisms on bottom surfaces.

3 ***The Clean Water Act***

4 19. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any
5 pollutant into waters of the United States unless the discharge is in compliance with
6 various enumerated CWA requirements. Among other things, CWA section 301(a)
7 prohibits discharges not authorized by, or in violation of, the terms of a National
8 Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to CWA
9 section 402, 33 U.S.C. § 1342.

10 20. CWA section 402(b), 33 U.S.C. § 1342(b), allows each state to administer
11 its own EPA approved permit program for discharges. In California, the State Board
12 and its nine Regional Boards have approval from EPA to administer an NPDES permit
13 program for the State. The State Board and Regional Boards issue individual and
14 general NPDES permits regulating water pollutant discharges from various categories
15 of dischargers.

16 21. CWA section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits
17 be issued for stormwater discharges "associated with industrial activity."

18 22. CWA section 301(b) requires that, by March 31, 1989, all point source
19 dischargers, including those discharging polluted stormwater must achieve technology
20 based effluent limitations by utilizing the Best Available Technology Economically
21 Achievable ("BAT") for toxic and nonconventional pollutants and the Best
22 Conventional Pollutant Control Technology ("BCT") for conventional pollutants. *See*
23 33 U.S.C. § 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

24 23. CWA section 505(a)(1) provides for citizen enforcement actions against
25 any "person," including individuals, corporations, or partnerships, for violations of
26 NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C.
27 § 1365(a)(1), *see* 33 U.S.C. § 1362(5).

1 24. CWA section 505(a) authorizes a citizen suit action for injunctive relief.
2 33U.S.C. § 1365(a).

3 25. CWA violators are subject to an assessment of civil penalties of up to
4 \$37,500 per day per violation for violations occurring after January 12, 2009. 33
5 U.S.C. § 1319(d), 40 C.F.R. §§ 19.1-19.4.

6 ***State Regulations***

7 26. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water
8 Quality Standards, including water quality objectives and beneficial uses for navigable
9 waters of the United States. The CWA prohibits discharges from causing or
10 contributing to a violation of such state Water Quality Standards. See 33 U.S.C. §
11 1311(b)(1)(c); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. § 122.44(d)(1).

12 27. The State of California regulates water quality through the State Board
13 and nine Regional Boards, and each Regional Board maintains a separate Water
14 Quality Control Plan which contains Water Quality Standards for water bodies within
15 its geographic area.

16 28. Water Quality Standards (“WQS”) applicable to Defendants are set forth
17 in the California Toxic Rule (“CTR”)¹ and Chapter 3 of the Los Angeles Region
18 (Region 4) Water Quality Control Plan (the “Basin Plan”). Exceedances of WQS
19 constitute violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

20 29. The Basin Plan establishes WQS for all Inland Surface Waters of Los
21 Angeles and Ventura Counties, including but not limited to the following:

22 a. Waters shall not contain suspended or settleable material in
23 concentrations that cause nuisance or adversely affect beneficial users;

24 b. Waters shall be free of changes in turbidity that cause nuisance or
25 adversely affect beneficial uses. Increases in natural turbidity attributable

26
27 ¹ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble
28 accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

1 to controllable water quality factors shall not exceed 20% where natural
2 turbidity is between 0 and 50 nephelometric turbidity units (“NTU”), and
3 shall not exceed 10% where the natural turbidity is greater than 50 NTU;

4 c. All waters shall be maintained free of toxic substances in
5 concentrations that are toxic to, or that produce detrimental physiological
6 responses in, human, plant, animal, or aquatic life; and

7 d. Surface waters shall not contain concentrations of chemical
8 constituents in amounts that adversely affect any designated beneficial
9 use.

10 30. In addition, the EPA has promulgated WQS for toxic priority pollutants
11 in all California water bodies (the “California Toxics Rule” or “CTR”), which include
12 and apply to the Los Angeles River, its tributaries, and the overall Los Angeles River
13 Watershed, unless expressly superseded by the Basin Plan. 65 Fed. Reg. 31,682 (May
14 18, 2000); 40 C.F.R. § 131.38.

15 ***The Industrial Stormwater Permit***

16 31. In California, the State Board has elected to issue a single, statewide
17 general permit applicable to all stormwater discharges associated with industrial
18 activity. On April 17, 1997, the State Board adopted the 1997 Permit, which was in
19 effect through June 30, 2015. On July 1, 2015, the 2015 Permit became effective and
20 superseded the 1997 Permit, except for enforcement purposes.² To discharge
21 stormwater lawfully in California, industrial dischargers must secure coverage under
22 the Industrial Stormwater Permit and comply with its terms or obtain and comply with

23
24
25 ² Notably, the 2015 Permit is much more comprehensive than its predecessor, including
26 expanding its purview to “light industry” uses previously exempted, and including
27 more prescriptive requirements for various parts of permit compliance, including
28 BMPs, NALs, SWPPP requirements, Total Daily Maximum Loads for receiving
waters, amongst others. *See generally*, 2015 Permit.

1 an individual NPDES permit. 1997 Permit, p. II; 2015 Permit, Section I(A)(Findings
2 8, 12).

3 32. The Industrial Stormwater Permit is an NPDES permit issued pursuant to
4 CWA section 402(p), 33 U.S.C. § 1342(p). Violations of the Industrial Stormwater
5 Permit are also violations of the CWA. 1997 Permit, Section C(1); 2015 Permit,
6 Section XXI(A).

7 33. The Industrial Stormwater Permit contains certain absolute prohibitions.
8 The Industrial Stormwater Permit prohibits the direct or indirect discharge of materials
9 other than stormwater ("non-stormwater discharges"), which are not otherwise
10 authorized by an NPDES permit, to the waters of the United States. 1997 Permit, Order
11 Part A(1); 2015 Permit, Section III(B). The Industrial Stormwater Permit prohibits
12 stormwater discharges that cause or threaten to cause pollution, contamination, or
13 nuisance (1997 Permit, Order Part A(2); 2015 Permit, Sections III(C), VI(C)) and
14 discharges that adversely impact human health or the environment (1997 Permit, Order
15 Part C(1); 2015 Permit, Section VI(B)). Finally, the Industrial Stormwater Permit
16 prohibits discharges that cause or contribute to an exceedance of any applicable water
17 quality standard contained in a Statewide Water Quality Control Plan or the applicable
18 Regional Board's Basin Plan. 1997 Permit, Order Part C(2); 2015 Permit, Section
19 VI(A).

20 34. On April 1, 2014, the State Board adopted an updated NPDES General
21 Permit for Discharges Associated with Industrial Activity, Water Quality Order No.
22 2014-57-DWQ, effective as of July 1, 2015. As of the effective date, Water Quality
23 Order No. 2014-57-DWQ supersedes and rescinds the current Industrial Stormwater
24 Permit, Water Quality Order No. 97-03-DWQ, except for purposes of enforcement
25 actions brought pursuant to the Industrial Stormwater Permit, Water Quality Order No.
26 97-03-DWQ.

1 35. Under the CWA and the Industrial Stormwater Permit, dischargers must
2 employ Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce
3 or eliminate stormwater pollution. 33 U.S.C. § 1311(b); 1997 Permit, Order Part B(3);
4 2015 Permit, Section X(H). The EPA has developed benchmark levels
5 (“Benchmarks”) that are objective guidelines to evaluate whether a permittee’s BMPs
6 achieve compliance with the BAT/BCT standards. Final National Pollutant Discharge
7 Elimination System (NPDES) General Permit for Stormwater Discharges From
8 Industrial Activities (“Multi-Sector Permit”), 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30,
9 2000); Multi Sector Permit, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi Sector
10 Permit, 80 Fed. Reg. 34,403 (June 16, 2015).

11 36. The 2015 Permit includes Numeric Action Limits (NALs) that are based
12 on Benchmarks. 2015 Permit, Section I(M) (Finding 62). Like Benchmarks, the NALs
13 indicate “the overall pollutant control performance at any given facility.” *Id.* Section
14 I(M) (Finding 61).

15 37. Dischargers must develop and implement a Storm Water Pollution
16 Prevention Plan (“SWPPP”) at the time industrial activities begin. 1997 Permit,
17 Section A(1)(a) and Order Part E(2); 2015 Permit, Sections I(I) (Finding 54), X(B).
18 The SWPPP must identify and evaluate sources of pollutants associated with industrial
19 activities that may affect the quality of stormwater and authorized non-stormwater
20 discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G).
21 The SWPPP must identify and implement site-specific BMPs to reduce or prevent
22 pollutants associated with industrial activities in stormwater and authorized non-
23 stormwater discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H). The
24 SWPPP must include BMPs that achieve pollutant discharge reductions attainable via
25 BAT and BCT. 1997 Permit, Order Part B(3); 2015 Permit, Sections I(D) (Finding
26 32), V(A).

1 38. The SWPPP must include: a narrative description and summary of all
2 industrial activity, potential sources of pollutants, and potential pollutants; a site map
3 indicating the stormwater conveyance system, associated points of discharge, direction
4 of flow, areas of actual and potential pollutant contact, including the extent of pollution
5 generating activities, nearby water bodies, and pollutant control measures; a
6 description of stormwater management practices; a description of the BMPs to be
7 implemented to reduce or prevent pollutants in stormwater discharges and authorized
8 non-stormwater discharges; the identification and elimination of non-stormwater
9 discharges; the location where significant materials are being shipped, stored, received,
10 and handled, as well as the typical quantities of such materials and the frequency with
11 which they are handled; a description of dust and particulate-generating activities; and
12 a description of individuals and their current responsibilities for developing and
13 implementing the SWPPP. 1997 Permit, Section A(1)-(10); 2015 Permit, Section X.

14 39. The Industrial Stormwater Permit also requires facility operators to
15 properly operate and maintain any facilities and systems of treatment and control
16 installed or used to achieve compliance with the conditions of the Industrial
17 Stormwater Permit and requirements of the SWPPP at all times. 1997 Permit, Section
18 C(5); 2015 Permit, Section XXI(F).

19 40. The SWPPP and site maps must be assessed annually and revised as
20 necessary to ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4);
21 2015 Permit, Sections I(J) (Finding 55), X(B)(1).

22 41. The 1997 Permit required facility operators to develop and implement a
23 monitoring and reporting program ("MRP") when industrial activities begin at a
24 facility. 1997 Permit, Section B(1)-(2) and Order Part E(3). The MRP must ensure
25 that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent
26 Limitations, and Receiving Water Limitations specified in the 1997 Permit. *Id.* at
27 Section B(2). The MRP must ensure that practices at the facility to prevent or reduce
28

1 pollutants in stormwater and authorized non-stormwater discharges are evaluated and
2 revised to meet changing conditions at the facility, including revision of the SWPPP.
3 *Id.*

4 42. Facilities are required to make monthly visual observations of storm water
5 discharges. The visual observations must represent the quality and quantity of the
6 facility's storm water discharges form the storm event. 1997 Permit, § B(7); 2015
7 Permit, § XI.A.

8 43. The 2015 Permit requires facility operators to monitor and sample
9 stormwater discharges to ensure that the facility is complying with the terms of the
10 permit. 2015 Permit, Sections I(J) (Findings 55-56); XI.

11 44. Under the 1997 Permit, facilities must analyze storm water samples for
12 "toxic chemicals and other pollutants that are likely to be present in storm water
13 discharges in significant quantities." 1997 Permit, § B(5)(c)(ii). Under the 2015
14 Permit, facilities must analyze storm water samples for "[a]dditional parameters
15 identified by the Discharger on a facility-specific basis that serve as indicators of the
16 presence of all industrial pollutants identified in the pollutant source assessment." 2015
17 Permit, § XI(B)(6)(c).

18 45. Pursuant to the monitoring and reporting requirements of the Industrial
19 Stormwater Permit, facility operators must conduct ongoing visual observations of
20 stormwater and non-stormwater discharges and record responsive measures taken to
21 eliminate unauthorized non-stormwater discharges and to reduce or prevent pollutants
22 in stormwater and authorized non-stormwater discharges. 1997 Permit, Sections B(3)-
23 (4); 2015 Permit, Section XI(A). Facility operators must collect samples of stormwater
24 discharges from all locations where stormwater may be discharged from the facility.
25 1997 Permit, Sections B(5), (7); 2015 Permit, Section XI(B)(4)-(5). As a part of MRP,
26 these collections and analyses must be conducted twice a year; samples must be
27 collected during "the first hour of discharge from (1) the first storm event of the wet
28

1 season, and (2) at least one other storm event in the wet season.” *Id.* Through the
2 2014-2015 reporting period, facility operators were required to analyze stormwater
3 samples for pH, total suspended solids, total organic carbon (or oil and grease as a
4 substitute), specific conductance, toxic chemicals, and other pollutants which are likely
5 to be present in significant quantities in stormwater discharging from the facility. 1997
6 Permit, Section B(5).

7 46. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and
8 analyze storm water samples from two qualifying storm events (“QSEs”) during the
9 first half of each reporting year (July 1 to December 31) and two QSEs during the
10 second half of each reporting year (January 1 to June 30).

11 47. Under the 1997 Permit, all facilities falling under ten broad industrial
12 categories (including numerous, more specific subcategories) listed in 40 C.F.R.
13 Subchapter N must comply with effluent limitations as proscribed by the E.P.A.
14 Significantly, Defendants fall under one such category, relating to the Fertilizing
15 Manufacturing Point Source Category. *See*, 40 C.F.R. Subchapter N §§ 418.10 –
16 418.77.

17 48. In addition to testing required under the listed categories of 40 C.F.R.
18 Subchapter N, the EPA has established the Benchmark values as guidelines for
19 determining whether a facility discharging industrial storm water has implemented the
20 requisite BAT and BCT. *See*, U.S. EPA 2008 Multi-Sector General Permit for
21 Stormwater Discharges Associated with Industrial Activity (the “2008 MSGP”). These
22 Benchmarks represent pollutant concentrations at which a storm water discharge could
23 potentially impair, or contribute to impairing, water quality, or affect human health
24 from ingestion of water or fish. Notably, the Benchmark levels contained in the 2008
25 MSGP is “consistent” with the BMPs required of facilities under the Industrial
26 Stormwater Permit. 2015 Permit I(D)(33). The following EPA Benchmarks have been
27 established for pollution parameters applicable to the Facility at issue in this action: (i)
28

1 Total Aluminum – 0.75 Mg/L; (ii) Total Iron – 1.0 Mg/L; (iii) Total Zinc, 0.04-0.26
2 Mg/L³; (iv) Nitrate plus Nitrite Nitrogen – 0.68 Mg/L; and (v) Total Copper – 0.0038-
3 0.0332 Mg/L⁴.

4 49. These Benchmarks are reflected in the 2015 Permit in the form of Numeric
5 Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which are
6 derived from a Water Board dataset. The following NALs have been established under
7 the 2015 Permit: (i) Total Aluminum – 0.75 Mg/L; (ii) Total Iron – 1.0 Mg/L; (iii) Total
8 Zinc, 0.04-0.26 Mg/L⁵; (iv) Nitrate plus Nitrite Nitrogen – 0.68 Mg/L; and (v) Total
9 Copper – 0.0038-0.0332 Mg/L⁶. An exceedance of annual NALs occurs when the
10 average of all samples obtained for an entire facility during a single reporting year is
11 greater than a particular annual NAL. The reporting year runs from July 1 to June 30.
12 The 2015 Permit also established the following instantaneous maximum NALs: (i) pH
13 – 6.0 – 9.0 s.u.; (ii) TSS – 400 Mg/L; and (iii) O&G – 25 Mg/L. An instantaneous
14 maximum NAL exceedance occurs when two or more analytical results from samples
15 taken for any single parameter within a reporting year exceed the instantaneous
16 maximum NAL value (for TSS and O&G) or are outside of the instantaneous maximum
17 NAL range for pH. When a discharger exceeds an applicable NAL, it is elevated to
18 “Level 1 Status,” which requires revision of the SWPPP and additional BMPs. If a
19 discharger exceeds an applicable NAL during Level 1 Status, it is then elevated to
20 “Level 2 Status.” For Level 2 Status, a discharger is required to submit an Action Plan
21 requiring a demonstration of either additional BMPs to prevent exceedances, a
22 determination that the exceedance is solely due to non-industrial pollutant sources, or
23 a determination that the exceedance is solely due to the presence of the pollutant in the
24 natural background.

25
26 ³ Dependent on the freshwater hardness range of the receiving water.

27 ⁴ Dependent on the freshwater hardness range of the receiving water.

28 ⁵ Dependent on the freshwater hardness range of the receiving water.

⁶ Dependent on the freshwater hardness range of the receiving water.

1 50. Section B(14) of the 1997 Permit requires dischargers to include
2 laboratory reports with their Annual Reports submitted to the Regional Board. This
3 requirement is continued with the 2015 Permit. 2015 Permit, Fact Sheet, Paragraph O.

4 51. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
5 enforcement actions against any "person," including individuals, corporations, or
6 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)
7 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33
8 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil
9 penalties of up to \$37,500 per day per violation, pursuant to Sections 309(d) and 505
10 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 -19.4.

11 **STATEMENT OF FACTS**

12 ***Facility Background***

13 52. Defendants operate a Facility located at 5142 Alhambra Ave. in Los
14 Angeles, California.

15 53. The Facility is regulated by the Industrial Stormwater Permit.

16 54. Defendants submitted a Notice of Intent to comply with the Industrial
17 Stormwater Permit to the State Board in 2011 and in 2015.

18 55. Operations at the Facility generally include, but are not limited to (i) mold
19 and core production; (ii) metal charging; (iii) melting; (iv) hot metal pouring; (v) mold
20 cooling;; (vi) shakeout; (vii) shakeout; (viii) finishing; (ix) grinding; (x) machining;
21 (xi) plating and assembly operations. Other activities carried out in the regular course
22 of business at the Facility include: storage of fuel and other oils, maintenance,
23 equipment storage, and waste storage. Repair and maintenance activities carried out at
24 the facility include, but are not limited to, electrical, plumbing, roofing, asphalt,
25 concrete, and utilities repairs as well as janitorial duties. The Facility also maintains
26 material storage areas, and waste storage areas.

1 56. Some operations at the Facility occur outdoors and are causing pollutants
2 to be exposed to rainfall.

3 57. Vehicles and equipment at the Facility expose many other sources of
4 pollution to the elements, including gasoline, diesel fuel, anti-freeze, battery fluids, and
5 hydraulic fluids.

6 58. The types of pollutants that the Facility releases into the immediate
7 environment are known to include, or have the potential to include, among other
8 contaminants; total suspended solids ("TSS"), waste oils, lubricants, fuel, trash, debris,
9 hazardous materials, oil and grease, pH, Nitrate plus Nitrite Nitrogen, heavy metals,
10 such as aluminum, iron, zinc, copper, and other pollutants.

11 59. The industrial materials stored and the pollutants generated at the Facility
12 are exposed to stormwater flows.

13 60. Activities at the Facility generate significant debris and particulate matter,
14 which contain pollutants and settle on surfaces within the Facility. During rain events,
15 this pollution washes off of those surfaces and into the Los Angeles River, and the
16 overall Los Angeles River Watershed. Stormwater from the Facility discharges, into
17 the Los Angeles River and the overall Los Angeles River Watershed.

18 ***Activities Contributing to CWA Violations***

19 61. Defendants have not developed and/or implemented an adequate SWPPP
20 at the Facility.

21 62. Defendants have not developed and/or implemented BMPs that
22 adequately minimize the exposure of pollutants to stormwater at the Facility.

23 63. Defendants have not developed and/or implemented BMPs at the Facility
24 that adequately control and minimize polluted runoff from the Facility.

25 64. Defendants have not developed and/or implemented BMPs at the Facility
26 that adequately treat and remove pollutants in stormwater prior to discharge.
27
28

1 65. Defendants have not developed and/or implemented adequate measures to
2 reduce or eliminate stormwater pollution that constitute BAT/BCT.

3 66. Defendants have not developed and/or implemented adequate BMPs at
4 the Facility to achieve stormwater discharges that meet EPA Benchmarks or applicable
5 Water Quality Standards.

6 67. Defendants have not adequately evaluated and revised the Facility's
7 SWPPP to address these failures. Defendants have also failed to properly operate and
8 maintain the structures and systems that have been put in place at the Facility to achieve
9 compliance with the Industrial Stormwater Permit and its SWPPP requirements.

10 68. Defendants have not developed and/or implemented an adequate MRP at
11 the Facility.

12 69. Defendants' monitoring and reporting activities have not resulted in
13 practices that adequately reduce or prevent pollutants from discharging from the
14 stormwater flows from the Facility.

15 70. Defendants' monitoring activities have not effectively identified
16 compliance problems at the Facility or resulted in effective revisions of the SWPPP.

17 71. Due to Defendants' lack of effective pollution prevention measures,
18 including effective BMPs, and its failure to implement an effective monitoring and
19 reporting program, stormwater from the Facility becomes polluted with many
20 constituents. The potential pollutants from the Facility include total suspended solids
21 ("TSS"), waste oils, lubricants, fuel, trash, debris, hazardous materials, oil and grease,
22 pH, Nitrate plus Nitrite Nitrogen, heavy metals, such as Aluminum, Iron, Zinc, Copper
23 and other pollutants. Stormwater from the Facility discharges, via the local storm
24 sewer system and/or surface runoff, directly into the Los Angeles River, and the overall
25 Los Angeles River Watershed.

26 72. Polluted stormwater is discharged from the Facility into Los Angeles
27 River, and the overall Los Angeles River Watershed. The Los Angeles River, its
28

1 tributaries, and the overall Los Angeles River Watershed are waters of the United
2 States.

3 73. Defendants' NAL exceedances in stormwater runoff were reported in the
4 2015-2016, 2014-2015, and 2011-2012 Annual Reports as submitted to the Regional
5 Water Quality Control Board and indicate that the Facility's discharges of stormwater
6 are contaminated with higher levels of pollutants than are permissible under the
7 Industrial Stormwater Permit. Furthermore, the testing provided for the 2015-2016,
8 2014-2015, and 2011-2012 Annual Reporting periods were insufficient, with
9 Defendants providing effluent discharge testing for only one Qualifying Storm Event
10 in each period. As stated in the Industrial Stormwater Permit, facilities are required to
11 provide testing data, for all requisite NALs, for four Qualifying Storm Events per year.

12 74. Moreover, the testing provided for the 2013-2014, 2012-2013, and 2011-
13 2012 Annual Reporting periods were insufficient, with Defendants providing no
14 corresponding laboratory reports for the included NAL effluent testing data.

15 75. In addition to these stated overages, Defendants also failed to perform
16 sampling for required NALs in the Annual Reports for the last 2013-2014 and 2012-
17 2013 reporting period, which did not contain any effluent discharge testing information
18 whatsoever for the any NAL as is required under the Industrial Stormwater Permit.

19 76. Due to these numerous insufficiencies, discrepancies, and overages
20 contained in the Defendants' annual stormwater sampling, the Facility's discharges of
21 stormwater are likely to be regularly contaminated with higher levels of pollutants than
22 are consistent with BMPs that constitute BAT/BCT.⁷

23
24
25
26
27 ⁷ Defendants' exceedances of permissible NAL levels, and/or failures to report NAL testing, for the
28 2015-2016, 2014-2015, 2013-2014, 2012-2013, and 2011-2012 are described in more detail in the
Notice, which is attached to this Complaint as Exhibit 1.

FIRST CAUSE OF ACTION

**Discharges in Violation of Permit Prohibitions of the Industrial
Stormwater Permit
(Violations of 33 U.S.C. §§ 1311, 1342)**

77. Plaintiff incorporates the allegations contained in all other paragraphs as though fully set forth herein.

78. The Industrial Stormwater Permit requires that stormwater discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance; and shall not cause or contribute to a violation of any water quality standards contained in a statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan (collectively, "Prohibitions").

79. Since at least August 22, 2011, Defendants have been discharging polluted stormwater from the Facility in violation of the Prohibitions of the Industrial Stormwater Permit during every significant rain event (defined by EPA as a rainfall event generating 0.2 inches or more of rain). See Exhibit 1, Notice Letter at Attachment 3.

80. The polluted stormwater discharged from the Facility during every significant rain event contains pollutants harmful to fish, plants, birds, and human health that have adversely affected, and continue to adversely affect, human health and the environment in violation of the Industrial Stormwater Permit.

81. Discharges of polluted stormwater from the Facility have in the past caused, and will continue to cause, pollution, contamination, and/or nuisance to the waters of the United States in violation of the Industrial Stormwater Permit and the Water Quality Standards set forth in the Basin Plan.

82. Each day since at least August 22, 2011 that Defendants have discharged polluted stormwater from the Facility in violation of the Industrial Stormwater Permit is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

1 83. By committing the acts and omissions alleged above, Defendants are
2 subject to an assessment of civil penalties pursuant to CWA sections 309(d) and 505,
3 33 U.S.C. §§ 1319(d) and 1365.

4 84. An action for injunctive relief is authorized by CWA section 505(a), 33
5 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
6 irreparably harm Plaintiff, for which harm he has no plain, speedy, or adequate remedy
7 at law.

8 85. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
9 because an actual controversy exists as to the rights and other legal relations of the
10 Parties.

11 **SECOND CAUSE OF ACTION**

12 **Discharge in Violation of Effluent Limitations of the Industrial**
13 **Stormwater Permit**
14 **(Violations of 33 U.S.C. §§ 1311, 1342)**

15 86. Plaintiff incorporates the allegations contained in all other paragraphs as
16 though fully set forth herein.

17 87. The Industrial Stormwater Permit's SWPPP requirements and effluent
18 limitations require dischargers to reduce or prevent pollutants in their stormwater
19 discharges through the implementation of measures that must achieve BAT for toxic
20 and nonconventional pollutants and BCT for conventional pollutants.

21 88. Defendants have discharged and continue to discharge stormwater from
22 the Facility containing levels of pollutants that do not achieve compliance with the
23 BAT/BCT requirements during every significant rain event occurring from August 22,
24 2011 through the present. Defendants' failure to develop and/or implement BMPs
25 adequate to achieve the pollutant discharge reductions attainable via BAT or BCT at
26 the Facility is a violation of the Industrial Stormwater Permit and the CWA. *See* 1997
27 Permit, Order Part B(3); 2015 Permit, Sections I(D) (Finding 32), V(A); 33 U.S.C. §
28 1311(b).

1 89. Each day since at least August 22, 2011 that Defendants have discharged
2 stormwater containing pollutants in violation of the Industrial Stormwater Permit,
3 specifically Effluent Limitation B(3) of the 1997 Permit, is a separate and distinct
4 violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

5 90. Defendants' CWA violations described in the paragraphs above will
6 continue in the future until Defendants develop and implement BMPs at the Facility
7 adequate to achieve pollutant discharge reductions attainable via BAT and BCT.

8 91. By committing the acts and omissions alleged above, Defendants are
9 subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the
10 CWA, 33 U.S.C. §§ 1319(d) and 1365.

11 92. An action for injunctive relief is authorized by CWA section 505(a), 33
12 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
13 irreparably harm Plaintiff for which harm he has no plain, speedy, or adequate remedy
14 at law.

15 93. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
16 because an actual controversy exists as to the rights and other legal relations of the
17 Parties.

18 **THIRD CAUSE OF ACTION**

19 **Failure to Develop and Implement an Adequate Storm Water** 20 **Pollution Prevention Plan, In Violation of the Industrial Stormwater Permit** 21 **(Violations of 33 U.S.C. § 1311, 1342)**

22 94. Plaintiff incorporates the allegations contained in all other paragraphs as
23 though fully set forth herein.

24 95. The Industrial Stormwater Permit requires dischargers of stormwater
25 associated with industrial activity to develop and implement an adequate SWPPP when
26 they commence industrial activity. 1997 Permit, Section A(1); 2015 Permit, Section
27 X(B).
28

1 96. Defendants, as of May 12, 2011, have commenced industrial activity and
2 continue to conduct industrial activity at the Facility.

3 97. Defendants have failed and continue to fail to develop and implement an
4 adequate SWPPP or implement all necessary revisions to the SWPPP for the Facility
5 as required by the Industrial Stormwater Permit.

6 98. Defendants have failed and continue to fail to develop or implement a
7 SWPPP for the Facility that includes BMPs adequate to meet the requirements of the
8 Industrial Stormwater Permit, specifically Section A of the 1997 Permit and Section X
9 of the 2015 Permit.

10 99. Defendants have failed and continue to fail to adequately develop or
11 implement a SWPPP at the Facility that prevents discharges from violating the
12 Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the
13 Industrial Stormwater Permit.

14 100. Each day since August 22, 2011 that Defendants have failed to adequately
15 develop and/or implement a SWPPP for the Facility in violation of the Industrial
16 Stormwater Permit is a separate and distinct violation of CWA section 301(a), 33
17 U.S.C. § 1311(a).

18 101. Defendants have been in violation of the Industrial Stormwater Permit's
19 SWPPP requirements every day since August 22, 2011. Defendants will continue to
20 be in violation of the SWPPP requirements each day that Defendants fail to develop
21 and fully implement an adequate SWPPP for the Facility.

22 102. By committing the acts and omissions alleged above, Defendants are
23 subject to an assessment of civil penalties pursuant to CWA sections 309(d) and 505,
24 33 U.S.C. §§ 1319(d) and 1365.

25 103. An action for injunctive relief is authorized by CWA section 505(a), 33
26 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
27
28

1 irreparably harm Plaintiff for which harm he has no plain, speedy, or adequate remedy
2 at law.

3 104. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
4 because an actual controversy exists as to the rights and other legal relations of the
5 Parties.

6 **FOURTH CAUSE OF ACTION**

7 **Failure to Develop and Implement an Adequate Monitoring and Reporting**
8 **Program, In Violation of the Industrial Stormwater Permit**
9 **(Violations of 33 U.S.C. §§ 1311)**

10 105. Plaintiff incorporates the allegations contained in all other paragraphs as
11 though fully set forth herein.

12 106. Defendants have discharged and continue to discharge pollutants from the
13 Facility in violation of the Industrial Stormwater Permit. Defendants are also in
14 violation of the Industrial Stormwater Permit for repeated failure to report proper
15 annual stormwater discharge data as required by the Industrial Stormwater Permit.
16 Thus, Defendants' discharges constitute an unpermitted discharge of pollutants from
17 the Facility to waters of the United States in violation of CWA section 301(a), 33
18 U.S.C. § 1311(a).

19 107. Defendants have been in violation of CWA section 301(a) every day they
20 have discharged stormwater from the Facility to waters of the United States since July
21 26, 2011. Defendants will continue to be in violation of the CWA each day that
22 unpermitted stormwater discharges from the Facility to waters of the United States.

23 108. By committing the acts and omissions alleged above, Defendants are
24 subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the
25 CWA, 33 U.S.C. §§ 1319(d) and 1365.

26 109. An action for injunctive relief is authorized by CWA section 505(a), 33
27 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
28

1 irreparably harm Plaintiff for which harm he has no plain, speedy, or adequate remedy
2 at law.

3 110. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
4 because an actual controversy exists as to the rights and other legal relations of the
5 Parties.

6 **RELIEF REQUESTED**

7 Plaintiff respectfully requests this Court to grant the following relief:

8 A. Declare Defendants to have violated and to be in violation of sections
9 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and (b), for discharging
10 pollutants from the Facility in violation of a permit issued pursuant to section 402(p)
11 of the CWA, 33 U.S.C. § 1342(p), for failing to meet effluent limitations which include
12 the Best Available Technology Economically Achievable and Best Conventional
13 Pollutant Control Technology requirements, and for failing to comply with the
14 substantive and procedural requirements of the Industrial Stormwater Permit;

15 B. Enjoin Defendants from discharging pollutants from the Facility to
16 stormwater discharge points, which discharge to the Los Angeles River, and the overall
17 Los Angeles River Watershed;

18 C. Order Defendants to restore all receiving waters damaged by Defendants'
19 illegal discharges of pollutants from the Facility;

20 D. Enjoin Defendants from violating sections 301(a) and (b) and section
21 402(p) of the Clean Water Act and from violating the substantive and procedural
22 requirements of the Industrial Stormwater Permit at the Facility;

23 E. Order Defendants to pay civil penalties of up to \$37,500 per day for all
24 violations occurring after August 22, 2011 in accordance with CWA section 309(d), 33
25 U.S.C. § 1319(d) and 40 C.F.R. §§ 19.1-19.4;

26 F. Award Plaintiff his costs (including reasonable attorney, witness, and
27 consultant fees) as authorized by the CWA section 505(d), 33 U.S.C. § 1365(d);
28

1 G. Award such other relief as this Court may deem appropriate.

2 Dated: November 10, 2016

BRODSKY & SMITH, LLC

3
4 By: 

5 Evan J. Smith, Esquire (SBN242352)

6 esmith@brodsky-smith.com

7 Ryan Cardona, Esquire (SBN302113)

8 rcardona@brodsky-smith.com

9 9595 Wilshire Boulevard, Suite 900

10 Beverly Hills, CA 90212

11 Telephone: (877) 534-2590

12 Facsimile: (310) 247-0160

13 *Attorneys for Plaintiff*